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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,070	04/08/2004	Stephen P. Fox	23345.01	7218

7590 07/14/2004

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EXAMINER

GARRETT, ERIKA P

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/820,070

Applicant(s)

FOX, STEPHEN P.

Examiner

Erika Garrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-9, 11 and 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Bemis (5,216,852). Bemis discloses the use of leaf gutter comprising a substantially planar portion (60), a roof-side edge (66) and one or more rows of elongated slits (70) define in the planar portion; wherein each of the rows of elongated slits is substantially parallel to the roof-side edge; and wherein each of the elongated slits is oriented substantially perpendicular to the roof-side edge. In regards to claims 4-5&17, wherein each of the elongated slits is bounded by a first side of material and an opposite second side of material, wherein the first side of the material slopes upward and the second side of material slopes downward; where each of the elongated slits of the same row has first and second sides of material that slopes in the same direction. In regards to claim 6, wherein the elongated sheet of material is constructed of a metal selected from steel and copper. In regards to claim 7, wherein each of the elongated slits is between ½ inch and 2 inches in length. In regards to claim 8, wherein the elongated sheet material further includes a curved nose portion (34) that curves inwardly beneath the substantially planar portion. In regards to claim 11, wherein the

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curved nose section is adapted to hang above the outside rim of a gutter such that a gap of about $\frac{1}{4}$ inches and about $\frac{1}{2}$ inch is formed. In regards to claim 13, wherein the sheet of material further includes a bent connection (32) adjacent the roof-side edge, wherein the bent connection is adapted for attachment to a vertical support structure. In regards to claim 14, the slits are separated from each immediately adjacent elongated slit by distance of between about $\frac{1}{4}$ to about 1 inch. In regards to claim 15, further includes an inwardly bent portion (32) define in the planar portion, wherein the bent connection portion is adapted for attachment to the support structure. In regards to claim 16, wherein one or more elongated slits include at least two rows elongated slits and wherein each of the rows of elongated slits are parallel to the roof-side.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3,9-10,12,18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bemis in view of Kuhns (5,471,798). Bemis shows the use of all the claimed invention but fails to show the use of at least two adjacent rows of elongated slits, the trough portion having a plurality of slots, a plurality of apertures through a threaded portion of a screw can pass to secure the outer lip, the roof having shingles. Kuhns teaches the use of at least two adjacent rows of elongated slits, the trough portion having a plurality of slots (32,31), a plurality of apertures through a threaded

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portion (3) of a screw (18) can pass to secure the outer lip, the roof having shingles (2).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the gutter with at least two adjacent rows of elongated slits, the trough portion having a plurality of slots, a plurality of apertures through a threaded portion of a screw can pass to secure the outer lip, the roof having shingles as taught by Kuhns, in order to secure the planar portion to the gutter and prevent the gutter from being clogged with leaves or other debris.

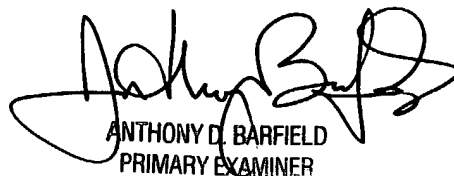
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to gutters: U.S Pat. No. 5127200, 5864990, 5409602, 4435925, 5010696, 4631875.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 703-605-0758. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EG
July 11, 2004



ANTHONY D. BARFIELD
PRIMARY EXAMINER